



**WISCONSIN SUPREME COURT  
FRIDAY, APRIL 29, 2005  
9:45 a.m.**

03-1067 Elaine Marie Kohn, et al v. Darlington Community Schools, et al

*This is a review of a decision of the Wisconsin Court of Appeals, District IV (headquartered in Madison), which reversed a summary judgment of the Lafayette County Circuit Court, Reserve Judge Daniel L. LaRocque presiding.*

This case involves a child who was injured when she fell through a set of bleachers on a high school football field. The Supreme Court is expected to decide whether the deadline for filing a lawsuit has expired – a determination that will require, in turn, a clarification of whether bleachers meet the legal definition of “improvements to real property.”

Here is the background: On Sept. 29, 2000, Elaine M. Kohn and her mother, Lori, were attending a Darlington Redbirds homecoming football game at Darlington High School. They sat on aluminum bleachers that were fabricated and installed in August 1969 by Standard Steel Industries, Inc., which has since merged with other companies and currently is Illinois Tool Works Inc. (ITW). At about 2:30 in the afternoon, Elaine, who was 4 ½ at the time, fell through the bleachers and suffered a serious head injury.

The Kohns sued the school district, the district’s insurer, and ITW on Aug. 15, 2001, claiming that the school had breached its duty of care to them. The defendants filed a counterclaim alleging that Lori had been negligent in her supervision of her daughter. The trial court concluded that the bleachers were an improvement to real property, which meant that a statute<sup>1</sup> imposing a 10-year limitation period applied. Because Elaine was injured almost 31 years after the bleachers were installed, the court dismissed the case.

The Kohns appealed, and the Court of Appeals found in their favor, concluding that the bleachers were not, in fact, an improvement to real property. The Court of Appeals determined that the deadlines imposed in personal injury cases apply in this case, meaning that the Kohns’ lawsuit was filed timely.

Now, the school district, its insurer, and ITW have come to the Supreme Court where they argue that the bleachers are, in fact, a permanent addition to the school grounds – in other words, an improvement to the real property. They point out that the bleachers cost more than \$16,000 to install in 1969, have never since been disassembled or moved, and are anchored into asphalt. The Kohns, on the other hand, maintain that the Court of Appeals correctly determined that the bleachers rest on top of the ground, do not alter the landscape, did not require excavation to install, and can be taken down with no major effect on the land.

The Supreme Court will decide if bleachers qualify as “improvements to real property,” which will in turn determine whether the Kohns may continue their lawsuit against the district and the manufacturer.

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<sup>1</sup> Wis. Stat. § 893.89